

Memorandum

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The following are my comments on the Draft Industrial General Stormwater Permit:

S1.C.7. Will “excluded facilities” need to be covered under an individual permit? The general permit should include a mechanism that triggers this application process. This should not be done through Administrative Orders issued to each “excluded facility” that will need to apply for a different type of permit coverage.

S1.D.1. Proving a “significant process change” will be difficult for an inspector to prove. Failure to request a modification under this condition will likely be considered a Category 3 violation (low potential for threat to public health and/or the environment) and receive low priority for an enforcement action unless there is a strong link showing that the process change has led to Category 1 violations (actual, imminent or acute threats to public health, the environment, and/or species listed under the Endangered Species Act), or Category 2 violations (chronic or potential threat to human health, the environment, and/or species listed under the Endangered Species Act).

S1.D.2. This condition refers to the addition of a mixing zone requiring a modification. Condition S3.E. refers to a “standard” mixing zone for existing facilities. Condition S2.B.5. has a procedure to add a mixing zone. Does this mean that all existing facilities automatically have the standard mixing zone and only new facilities will need to apply for one? How will inspectors know who has a mixing zone, who has a standard mixing zone, and who has an expanded mixing zone and how big it is? The mixing zone conditions of the draft permit are confusing and should be clarified.

S1.E. Significant Contributor determination should not be made through an enforcement action unless there is a strong link showing that the facility has Category 1 violations, or Category 2 violations that would need to be addressed by the action. Appeals of the Significant Contributor determination should not be assigned to enforcement staff unless associated with an enforcement action that is seeking to correct Category 1, or 2 violations through an action that is requiring permit coverage.

S1.F. States that stormwater discharges to ground will be regulated as part of permit coverage for all facilities under this permit. Condition S1.B.3. states that industrial facilities that discharge all of their stormwater to ground do not require coverage unless they are determined to be significant contributors of pollutants to ground water. This is confusing, does the permit cover facilities discharging to ground or not? Does there need to be both a surface and ground water discharge for a facility to be covered? See comment above for condition S1.E., this would also apply to a Significant Contributor determination for a ground water discharge.

S2.B.1. If an existing facility fails to submit the identification of receiving waterbody form by September 30, 2002, it will be considered a Category 3 violation and a low priority for an enforcement action.

S2.B.2. If a pending applicant is required to submit the identification of receiving waterbody form, or a copy of the SWPPP, and they fail to do so, it will likely be considered a Category 3 violation and a low priority for an enforcement action unless there is a link to Category 1, or 2 violations.

S2.B.3. Failure of new or existing facilities to obtain permit coverage will be considered a Category 3 and a low priority for an enforcement action unless it can be determined that the facility also has Category 1, or 2 violations that could be corrected by an action that brings them under the permit. The likelihood of an enforcement follow up for failure to apply within 30 days of ecology notification is very low unless the Program is willing to dedicate a full time enforcement person exclusively to this general permit. Experience has shown that enforcement actions to bring facilities under permit coverage are very time consuming and have a poor success rate.

S2.B.3.c.ii. Staff may not available to inspect new facilities to ensure these requirements have been met prior to start up. Does Ecology intend to review and approve SWPPPs sometime in the future? Are all facilities (new,

existing not covered, previously covered, existing coverage) expected to submit SWPPPs? If so this should be clarified.

S2.B.5. Requiring all category 11 facilities that were not required to have coverage under the previous permit to submit an application for coverage, or an application for “no exposure” is unrealistic. Failure to submit this would be considered a Category 3 violation and a very low priority for an enforcement action.

S3.D.1. & 2. In the absence of an effluent limit established by a TMDL, is the effluent limit the Water Quality Standard as found in WAC 173-201A? The interim courses of action described in the 5 year compliance schedule are vague and subject to interpretation by both the facility and inspector. Options implemented by facilities are likely to be poorly thought out solutions such as hay bales. Trying to enforce this condition will be difficult without specifically required BMPs or actions. Specific BMPs for different industrial categories should be included as permit requirements (this was suggested by one of our AGs assigned to a penalty appeal for Stormwater Permit violations). Five years can go by without ever getting a facility discharge to meet water quality standards. This appears to be a “compliance off ramp” for existing facilities that should already have had these BMPs in place for years under the previous permit.

S3.D. A request for an expanded mixing zone will be difficult to evaluate according to the criteria established in WAC 173-201(A)-100(10). Much of this will need to be based on theoretical assumptions, or computer modeling to insure that the Department can make the determinations required. It will be very difficult to quantify the adequacy of the mixing zone size for storm events that exceed the size of the design storm.

S4. Getting the permittees to sample is going to be difficult. We need to be prepared to offer a lot of technical assistance with questions that will come up on how to sample, where to sample, what to sample, what lab to use, cost of analysis, etc. Even though this is in the permit we will likely get calls from permittees who do not understand this. For permittees who do not comply with this requirement a coordinated enforcement response should be taken centrally at the Program level rather than doing it region by region because the potential workload is very large. If consistent attainment of a benchmark value is achieved, reporting should be discontinued, the permittee should submit a letter making a request to discontinue sampling, and a response should be sent approving/disapproving the request, WPLCS will need to be adjusted according to our response. The qualifying storm event for triggering sampling has been difficult for sophisticated permittees such as wood treaters to work under, for facilities with few employees this will be a big problem. It will also be a problem to enforce, should we be looking for a rain gauge at every facility we visit? We should just forget the “first flush” theory and have them collect samples from the first runoff event of the month.

S4.A. Site visits to determine no environmental risk for facilities receiving “extreme hardship fee reductions” will be an big commitment of inspector time that will not be available for other priorities.

S4.A.1. Will visual monitoring results need to be reported? Are floating materials, odor, etc. considered permit violations?

S4.A.3. WPLCS can not be set up to look for the additional metals sampling if the zinc trigger is exceeded, this will need to be evaluated manually, who will do this?

S4.B.2. Sample 4 times during the 3 month period, why the inconsistency, this should be monthly to avoid confusion and potential for unnecessary violations. There could also be confusion when suspensions are taken for attaining benchmark values since Nitrate/Nitrite do not qualify for suspension. Ni9trat/Nitrite should also be considered for suspension.

S4.B.4. One of the biggest problems we see with junkyards is oil & grease, not metals. Oil & grease monitoring must be included for junkyards.

S4.D. Ecology must be prepared to let permittees know what the parameters are on the 303(d) list that are causing impairment for waterbodies where these facilities are located. Effluent limits should be established for these facilities under individual permits, they should not be covered under the general permit. How do we determine that

facilities are contributing to impairment if they are located a considerable distance from the impaired waterbody, must there be a discrete connection, can we assume overland, or sheet flow, underground flow?

S5. The falsification of information submitted to Ecology shall constitute **CRIMINAL** activity and will be referred to the Criminal Investigations Division for investigation and possible criminal prosecution.

S5.A. Why are we continuing to require monitoring results to be *received* by Ecology by certain dates. “Received By” is the criteria that the permittee has the least control over, why don’t we go with something like postmarked by? I have had to listen to many complaints from permittees who received a letter for late receipt of a DMR when it was submitted well within the time required and delivery was delayed by the Post Office. These are the kinds of things that make the Department look bad and make our jobs difficult. We should look at eliminating as many of these archaic artifacts as possible from all of our permits in favor of workable solutions (see comment S4. above for another archaic artifact).

Currently the regions receive DMRs, enter them into WPLCS, screen for violations, prepare and send warning letters, and enter the warning letters into WPLCS. When the Sand & Gravel DMRs were added it caused a major workload increase. The regions will not be able to absorb the additional workload of doing this for the Stormwater General Permit without additional staff. These duties would best be handled centrally by the Program instead of regionally.

S6.C. The minimum conditions should be verified by inspections prior to granting no exposure certification. Different inspectors have different opinions on what constitutes exposure of industrial materials and activities that will not be consistent. The no exposure certificate is another permit “off ramp”.

S6.E. Failure of facilities to renew no exposure certifications will be considered a Category 3 violation and a low priority for an enforcement action unless it can be determined that the facility also has Category 1, or 2 violations that are a result of the exposure.

S6.F. It will be difficult to insure compliance with this without frequent inspections of all facilities that have no exposure certification. If a facility has the certification and is later found to have some exposure an enforcement response should not be expected unless the facility also has Category 1, or 2 violations.

S7. In cases where a mixing zone is allowed it will be necessary for inspectors to be out in the receiving water (wading, or in a boat) and to measure the distance from the point of discharge to the edge of the mixing zone to sample to try and prove a water quality standard violation. This will be logistically difficult for inspectors. Compliance should be at the point of discharge and mixing zones should not be considered under this permit. Effluent limits should be calculated considering dilution to determine end of pipe limits just like we do for individual dischargers, or just make them meet the water quality standard at the end of the pipe. There could also be problems with effluent dominated streams, like stormwater ditches, and multiple contributors with overlapping mixing zones. Determining responsibility and correcting noncompliance in these situations would be extremely difficult at best.

S8.A.3. Administrative orders approving bypasses are not considered enforcement actions because they are not associated with violations. This being the case they will not be issued by enforcement staff, and will not be tracked in the Agency Enforcement Database.

S9.A.2. Failure to submit a SWPPP after an Ecology request will be considered a Category 3 violation and a low priority for an enforcement action unless it can be determined that the facility also has Category 1, or 2 violations that are a result of the failure to submit a SWPPP. Experience has shown that enforcement actions to submit SWPPPs are very time consuming and have a low rate of success.

S9.A.3. This seems to indicate that all facilities covered by the permit must submit a SWPPP, this is not clear in the permit. This is going to be a significant burden on regional filing staff and file storage capacity in the regions.

S9.A.4.a. The notice for an inadequate SWPPP should be in the form of a letter, or inspection report, which is issued by inspectors, it should not be a formal enforcement action that can be appealed. Inspectors/Permit Managers

should be responsible for working with permittees to address inadequate SWPPPs without going through a formal enforcement process. Experience has shown that requiring SWPPP revisions through formal enforcement actions is very time consuming and has a low success rate.

S9.B.2. The monitoring plan requirement will be a lot to expect from low tech businesses, Ecology should be prepared to provide extensive technical assistance, on site, to small businesses that need to develop monitoring plans.

S9.B.5. Include a statement that Ecology may require source control, or treatment BMPs beyond those identified in the Stormwater Manual if they are determined necessary for individual facilities.

General Comments: Determining compliance with this permit and correcting noncompliance through enforcement activity will be a major workload increase for existing staff. I am currently unable to devote the enforcement attention necessary to successfully ensure compliance with the existing permit. This is a great source of frustration for our regional Stormwater Permit Manager and myself. Many violations are not responded to because they are lower priority than other more serious problems that need to be responded to first. Due to an ever increasing workload many violations simply “fall off the plate” and are never responded to. The performance measure that has been adopted for enforcement focuses only on facilities with 5 or more DMR violations and does not include the substantial workload and complexities of the facilities covered by this permit. On junkyard can consume a significant percentage of the workload for an inspector and enforcement specialist, other programs that could provide help (MTCA, HWTR, TCP) do not. The Program must consider additional resources if it intends to successfully implement this permit. Additional inspectors should be assigned to the permit and they should be responsible for certain enforcement activities related to Category 1 and 2 violations. All Category 3 violations should be handled by a central stormwater enforcement officer working for the program on a statewide level. The regions do not have the staff to respond to the numerous Category 3 violations possible under this permit. WPLCS responsibilities and warning letters for DMR violations should also be taken care of by data entry and enforcement staff working for the program on a statewide level.